Crypto Update

CAHILLNXT

Potential Impact of the 2024 U.S. Election Results on the Crypto Sector

Executive Summary

The election of Donald Trump to a second term as President signals the potential for a fundamental shift in the U.S. regulatory landscape for users of crypto assets and blockchain technology across a variety of sectors, including gaming, art and entertainment, decentralized physical infrastructure networks (DePIN), social media, and perhaps most importantly, financial services. Under a second Trump Administration, with anticipated Republican control of key agencies, the Senate, and a potential GOP majority in the House, we expect a marked departure from the Biden Administration's approach to crypto asset regulation and banking supervision. This could include a revival of more open-minded stances toward crypto similar to those seen during Trump's first term.

The transition period leading up to the inauguration will be crucial as leadership of the current Administration may seek to finalize pending rules and bring new enforcement actions while preparations for the new team taking over are still in process. We anticipate the most significant changes will begin taking effect in the first two quarters of 2025, with broader policy shifts emerging over the subsequent 6 to 12 months.

Agency Leadership Changes

The most immediate impact will come through leadership changes at key regulatory agencies. At the Securities and Exchange Commission (SEC), while President Trump can immediately designate a new Chair from among sitting Commissioners, the power to remove current Commissioners before their terms expire is quite limited. Chair Gary Gensler's term extends to April 2026, and while he can be removed only for cause, Chairs have historically resigned when there is a change of administration. Commissioner Hester Peirce, the senior Republican appointee on the Commission, could potentially be designated as Acting Chair, though achieving a near-term three-seat Republican majority on the Commission would require the resignation of at least one Democratic Commissioner due to staggered term expirations.

Changes at other agencies relevant to the crypto sector could be more immediate and dramatic. Director Rohit Chopra can be removed from the Consumer Financial Protection Bureau (CFPB) without cause following the Supreme Court's 2020 ruling in *Seila Law LLC* v. *CFPB*, 591 U.S. 197 (2020). At Office of the Comptroller of the Currency (OCC), Acting Comptroller Michael Hsu serves on an interim basis and can be replaced immediately. These changes will automatically shift control of the governing board of the Federal Deposit Insurance Corp. (FDIC) to Republicans, as these agency heads hold FDIC board seats. While Chairman Martin Gruenberg could theoretically remain at the FDIC despite his previously announced resignation plans, he would most likely be consistently outvoted by the new Republican majority. At the Commodity Futures Trading Commission (CFTC), Commissioner Caroline Pham or Summer Mersinger could potentially be elevated to replace Chair Rostin Behnam.

Overarching Policy Shifts

We anticipate several significant policy shifts under the new Administration. The approach to crypto asset regulation is likely to return to one more focused on correcting informational asymmetries and addressing fraud, market manipulation, and other misconduct, rather than enforcing strict liability violations for more technical infractions, such as registration failures. This would mirror the stance taken during Trump's first term.

Moreover, the SEC's current recognition that both BTC and ETH are commodities and not securities, coupled with recent court rulings, may make it challenging for the SEC to maintain an overly broad classification of crypto assets as securities. This could have significant implications for major tokens like SOL, ADA, AVAX, and DOT, which share similar characteristics with ETH. Accordingly, trading and other third-party activities involving these assets would likely carry reduced risk of violating securities laws. Furthermore, recent court decisions regarding secondary market transactions in BNB and XRP are largely consistent with the position that similar secondary activities in those assets can be undertaken without registering with the SEC. This position may also be extended to other crypto assets when traded in secondary transactions. These developments, combined with the growing maturity of the crypto market, may also pave the way for the approval of additional exchange-traded products (ETPs) for well-established crypto assets like XRP (at least to the extent that meaningful futures markets in these assets develop). This evolving landscape already suggests a potential shift towards a more nuanced regulatory approach that acknowledges the varied nature of many crypto assets. This would also likely extend to the use of crypto assets for the purposes of "staking" (and, potentially, "restaking") as a means to enhance the security of the underlying blockchain networks.

Additionally, we expect a more supportive approach to banks engaging with the crypto sector, similar to the approach taken by the OCC under the leadership of then-Acting Comptroller Brian Brooks in 2020 when the OCC took positions permitting national banks to provide crypto asset custody and other services. In particular, we anticipate enhanced custody opportunities for institutional players and brokerage firms, with potentially less emphasis on—or a more permissive application process for—"special purpose broker-dealer (SPBD)" licensing, in addition to potential modification or reversal by the SEC staff of custody accounting requirements under the Staffing Accounting Bulletin No. 121 (SAB 121).

In Congress, rather than advancing the FIT21 bill passed by the House, we expect the thoughtful market structure legislation being developed in the Senate to be introduced during the next Congress. (Assuming a Republican majority in the House complementing Republican control of the Senate, which is possible as of this writing, the incorporation of any crypto asset focused legislation into the National Defense Authorization Act or other year-end must-pass legislation, seems very unlikely.) Even in a new Congress under full control of the Republican party, bipartisan support would still be highly valuable in moving forward crypto-oriented legislation. We believe that there is a high likelihood that the work that Wyoming Senator Cynthia Lummis and others in the Senate and House have done to build a bipartisan coalition on approaches to crypto asset market structure over the last several years will likely serve as a starting point for legislation in the new Congress. Nevertheless, a more accommodative approach at the SEC and other federal regulators may paradoxically reduce the urgency for comprehensive legislation, as market participants may find administrative rulemaking and interpretive guidance sufficient for their needs. However, this less-urgent approach to federal legislation may lead to more aggressive enforcement strategies in states like New York that have historically been more skeptical of activity in the crypto sector.

Stablecoin legislation would likely be an early priority for a Republican-led Congress, thus enabling more widespread adoption of crypto assets and encouraging a framework favoring private sector solutions over the implementation of a retail-focused U.S. dollar Central Bank Digital Currency (CBDC).

Finally, while President-elect Trump has promised to eliminate capital gains taxes on sales of BTC and establish a "federal bitcoin reserve," we view these initiatives as less likely to become law given the competing policy considerations and inevitable legislative hurdles. Moreover, while the tax proposal would make mining and trading BTC more profitable and a BTC "reserve," if established, could have a positive near-term impact on price, the tax reduction would have to be offset elsewhere, and the reserve could negatively impact market liquidity.

Enforcement Approach

The enforcement landscape at the main federal market regulatory agencies will likely evolve, though change will not be immediate. Looking back to Trump's first term as a benchmark, while enforcement existed, the focus and resolution approaches differed significantly from the current regime. We expect:

- A move away from the "regulation by enforcement" strategy, particularly at the SEC;
- Reduced emphasis on parallel proceedings across districts;
- Greater focus on clear fraud and misappropriation over technical violations; and
- More practical approach to evaluating protocol compliance efforts.

While current enforcement actions are unlikely to be immediately terminated, proposed settlement terms may become more balanced, with reduced emphasis on admissions of wrongdoing in technical violation cases and more practical remediation requirements.

Technical Framework Development and Compliance Relief

New frameworks are likely to emerge for various crypto market activities, potentially including "sandbox" programs for KYC-gated automated market maker (AMM) platforms, similar to the introduction of SPBD at the end of Trump's first term, to allow information gathering by the SEC.

Additionally, several areas could benefit from regulatory developments to reduce operational risk for decentralized platforms and markets:

- OFAC guidance on handling wallet addresses that have been "dusted" with sanctioned or problematic assets, such as assets that passed through Tornado Cash;
- Practical frameworks for decentralized exchange platforms (DEXs) and non-custodial wallet treatment, including a more nuanced approach to Internal Revenue Service's "broker rule" reporting affecting DEXs and non-custodial wallets, which is expected to go into effect in 2026 for transactions from 2025; and
- Clearer regulatory status for scaling solutions and trading in various tokens.

Conclusion

While the regulatory landscape will not change overnight, yesterday's election results signal a clear directional shift toward a more accommodative regulatory environment for crypto assets and financial innovation. We will continue to monitor developments and provide updates as the transition progresses.

Please let us know if you would like additional analysis of any specific aspects of these anticipated changes.

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The CahillNXT team continues to monitor developments in crypto asset cases as they unfold, as well as pending legislation, and other relevant events. If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to contact authors **Lewis Cohen**, **Sarah Chen**, **Morrease Leftwich**, your regular Cahill contacts, or publicationscommittee@cahill.com.